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*Attorneys for Bert C. Roberts, Jr.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**SR INTERNATIONAL BUSINESS  
INSURANCE COMPANY,**

*Plaintiff,*

v.

**MCI, INC., BERNARD EBBERS, SCOTT  
D. SULLIVAN, BETTY L. VINSON,  
TROY M. NORMAND, BUFORD YATES,  
JR., SUSAN G. BELL, CLIFFORD  
ALEXANDER, JR., JAMES C. ALLEN,  
JUDITH AREEN, CARL J. AYCOCK,  
RONALD R. BEAUMONT, FRANCESCO  
GALES, STILES A. KELLETT, JR.,  
GORDON S. MACKLIN, DAVID F.  
MYERS, JOHN A. PORTER, BERT C.  
ROBERTS, JR., ESTATE OF JOHN W.  
SIDGMORE, LAWRENCE A. TUCKER,  
JUAN VILLALONGA, MAX E. BOBBITT,  
AND JOHN DOES 1-50,**

*Defendants.*

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Case No.: 04 Civ 04567 (DLC)

ECF Case

**NOTICE OF DEFENDANT BERT C.  
ROBERTS, JR.'S MOTION TO  
DISMISS THIS ACTION FOR LACK  
OF SUBJECT MATTER  
JURISDICTION, PURSUANT TO  
F.R.CIV.P. 12(h)(3)**

**PLEASE TAKE NOTICE** that, upon Defendant Bert C. Roberts, Jr.'s Motion to Dismiss this Case for Lack of Subject Matter Jurisdiction, Pursuant to F.R.Civ.P. 12(h)(3), and Plaintiff's Complaint herein, Defendant Bert C. Roberts, Jr. will move this Court for an order, pursuant to Rule F.R.CIV.P. 12(h)(3), dismissing this action.

**PLEASE TAKE FURTHER NOTICE** that, all opposing papers, if any, including any memoranda of law, shall be served upon the undersigned within fourteen (14) days of service of Bert C. Roberts, Jr.'s motion papers.

Dated: July 7, 2004

S/  
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*Defendants.*

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Case No.: 04 Civ 04567 (DLC)

ECF Case

**DEFENDANT BERT C. ROBERTS,  
JR.'S MOTION TO DISMISS  
THIS ACTION FOR LACK OF  
SUBJECT MATTER JURISDICTION,  
PURSUANT TO F.R.CIV.P. 12(h)(3)**

Defendant Bert C. Roberts, Jr. moves to dismiss this action for lack of subject matter jurisdiction, pursuant to F.R.Civ.P. 12(h)(3) and Plaintiff's Complaint herein.

1. Plaintiff SR International Business Insurance Company ("SRI"), the sole plaintiff in this action, alleges in its Complaint herein that "Plaintiff SRI is a corporation organized under the laws of Switzerland with its principal place of business in Zurich, Switzerland." Complaint ¶6.

2. Plaintiff SRI's Complaint further alleges that "[u]pon information and belief, defendant Juan Villalonga ("Villalonga") resides in Spain . . . ." Complaint ¶21.

3. Plaintiff SRI's Complaint further alleges that this Court has subject matter jurisdiction of this action based solely upon 28 U.S.C. §1332(a)(2).

4. In fact, it is indisputable that defendant Juan Villalonga is not a citizen of any U.S. State, but, rather, a citizen or subject of a foreign state.

5. An action in which a single citizen or subject of a foreign state sues a defendant or defendants including a citizen or subject of a foreign state, basing subject matter jurisdiction upon 28 U.S.C. §1332(a)(2), lacks subject matter jurisdiction and must be dismissed. *Universal Licensing Corp. v. Paola del Lungo S.p.A.*, 293 F.3d 579 (2d Cir. 2002) (*citing International Shipping Co., S.A. v. Hydra Offshore, Inc.*, 875 F.2d 388 (2d Cir.), *cert. denied*, 493 U.S. 1003 (1989) (affirming Rule 11 sanctions against attorney for bringing jurisdictionally defective complaint on alien corporation's behalf against another alien corporation.)) Moreover, an allegation of "residence," rather than citizenship, for purposes of §1332 jurisdiction is insufficient. *Franceskin v. Credit Suisse*, 214 F.3d 253 (2d Cir. 2000).

6. WHEREFORE, Defendant Bert C. Roberts, Jr. respectfully requests that this action be dismissed.

Dated: July 7, 2004

Respectfully submitted,

S/

George E. Ridge

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